

**PROPOSED AMENDMENTS TO THE FEDERAL
RULES OF EVIDENCE**

**Rule 801. Definitions That Apply to This Article;
Exclusions from Hearsay**

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(d) Statements That Are Not Hearsay. A statement that meets the following conditions is not hearsay:

(1) *A Declarant-Witness's Prior Statement.* The declarant testifies and is subject to cross-examination about a prior statement, and the statement:

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(B) is consistent with the declarant's testimony and is offered:

(i) to rebut an express or implied charge that the declarant recently fabricated it or acted from a recent improper influence or motive in so testifying; or

- (ii) to rehabilitate the declarant's credibility as a witness when attacked on another ground; or

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**Rule 803. Exceptions to the Rule Against Hearsay —
Regardless of Whether the Declarant Is
Available as a Witness**

The following are not excluded by the rule against hearsay,
regardless of whether the declarant is available as a
witness:

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(6) *Records of a Regularly Conducted Activity.* A

record of an act, event, condition, opinion, or
diagnosis if:

- (A) the record was made at or near the time by
— or from information transmitted by —
someone with knowledge;
- (B) the record was kept in the course of a
regularly conducted activity of a business,
organization, occupation, or calling,
whether or not for profit;

(C) making the record was a regular practice of that activity;

(D) all these conditions are shown by the testimony of the custodian or another qualified witness, or by a certification that complies with Rule 902(11) or (12) or with a statute permitting certification; and

(E) the opponent does not show that the source of information or the method or circumstances of preparation indicate a lack of trustworthiness.

(7) ***Absence of a Record of a Regularly Conducted Activity.*** Evidence that a matter is not included in a record described in paragraph (6) if:

(A) the evidence is admitted to prove that the matter did not occur or exist;

(B) a record was regularly kept for a matter of that kind; and

(C) the opponent does not show that the possible source of the information or other circumstances indicate a lack of trustworthiness.

(8) ***Public Records.*** A record or statement of a public office if:

(A) it sets out:

(i) the office's activities;

(ii) a matter observed while under a legal duty to report, but not including, in a criminal case, a matter observed by law-enforcement personnel; or

(iii) in a civil case or against the government in a criminal case, factual

findings from a legally authorized
investigation; and

- (B)** the opponent does not show that the source
of information or other circumstances
indicate a lack of trustworthiness.

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